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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/700,078	11/03/2003	Brian Michael Bridgewater	A01463	3734
21898	7590	09/15/2005		
			EXAMINER	
			RONESI, VICKEY M	
			ART UNIT	PAPER NUMBER
			1714	

DATE MAILED: 09/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/700,078	BRIDGEWATER ET AL.	
	Examiner Vickey Ronesi	Art Unit 1714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 07 September 2005.  
 2a) This action is FINAL.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-7 and 10-14 is/are pending in the application.  
 4a) Of the above claim(s) 10-14 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-7 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_

**DETAILED ACTION**

1. Claims 1-7 and 10-14 are now pending in the application.
2. The objections to the specification are withdrawn in light of applicant's amendment filed 7/5/2005.
3. The obviousness-type double patenting rejections are withdrawn in light of applicant's filing of a terminal disclaimer. The terminal disclaimer filed on 7/5/2005 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of both US appl. 10/410,068 and 10/040,170 has been reviewed and is accepted. The terminal disclaimer has been recorded.
4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior office action.
5. No new grounds of rejection are set forth below. Thus, the following action is properly made final.

*Election/Restrictions*

6. Newly submitted claims 8-12 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Claims 1-7, drawn to a composition, classified in class 524, subclass 832 are patentably distinct from claims 8-12, drawn to a process, classified in class 523, subclass 346.

The inventions are distinct, each from the other because:

Claims 7-10 and claims 10-14 are related as product and process of making. The inventions are distinct if either or both of the following can be shown: (1) that the process as

claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, the product can be produced by initially mixing all ingredients together.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 10-14 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

***Claim Rejections - 35 USC § 102/103***

7. Claims 1-5 and 7-9 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Friel (US 5,731,377, cited on IDS dated 5/20/2004).

The rejection is adequately set forth in paragraph 3 of Office action mailed 4/4/2005 and is incorporated here by reference.

***Double Patenting***

8. Claims 1-7 are rejected under 35 U.S.C. 103(a) as being obvious over PGPub US 2004/0010071.

The discussion in paragraph 7 of Office action mailed 4/4/2005 is incorporated here by reference.

While the terminal disclaimer was sufficient to overcome the obviousness-type double patenting rejection, a statement of common ownership at the time of the inventions must be made

of record. It is mandatory that applicant submit a statement such as, "Application X and Application Y were, at the time the invention of Application X was made, owned by Company Z." See MPEP § 706.02(l)(2), page 700-55 of revised MPEP dated May 2004.

9. Claims 1, 2, and 4-7 are rejected under 35 U.S.C. 103(a) as being obvious over PGPub US 2002/0090459.

The discussion in paragraph 10 of Office action mailed 4/4/2005 is incorporated here by reference.

While the terminal disclaimer was sufficient to overcome the obviousness-type double patenting rejection, a statement of common ownership at the time of the inventions must be made of record. It is mandatory that applicant submit a statement such as, "Application X and Application Y were, at the time the invention of Application X was made, owned by Company Z." See MPEP § 706.02(l)(2), page 700-55 of revised MPEP dated May 2004.

#### *Response to Arguments*

10. Applicant's arguments filed 7/5/2005 have been fully considered but they are not persuasive. Specifically, applicant argues that the process in the product-by-process claims of claims 1-7 gives a different and unobvious product of prior art, Friel.

It is the examiner's position that the applicant has not provided clear evidence with proper side-by-side examples showing that the presently claimed process necessarily produces a different product from Friel. In particular, Examples 1 and 2 and Comparative Examples A, B, C, and D are not proper side-by-side examples since each one has a different amount of rheology

modifier (see Table 3.1 on pages 19-20). Note that Comparative Examples A, B, C, and D contain significantly more rheology modifier than the inventive examples, 1 and 2. Thus, it is impossible to tell whether the scrub resistance properties of the inventive and comparative examples are dependent on the process.

***Conclusion***

11. **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

***Contact Information***

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vickey Ronesi whose telephone number is (571) 272-2701. The examiner can normally be reached on Monday - Friday, 8:30 a.m. - 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (571) 272-1119. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

9/13/2005  
vr

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